

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19641
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On September 2, 2006, the Compliance Section of the State Tax Commission (Commission) timely issued two Notices of Deficiency Determination to [Redacted] (taxpayer). The Notices asserted the taxpayer was responsible for the unpaid taxes of [Redacted]. The first Notice asserted a penalty against the taxpayer for the unpaid withholding taxes for [Redacted] in the amount of \$5,066.06 for the periods January 2006 through June 2006. The second Notice asserted the taxpayer was responsible for the unpaid sales and use tax and related penalty and interest for [Redacted] in the amount of \$10,467.30 for the periods March 2006 through June 2006. On September 7, 2006, the taxpayer timely protested both Notices. The taxpayer requested an informal conference. A telephone conference was held on February 13, 2007, at which the taxpayer provided factual and legal arguments in support of her position that she is not responsible for tax debts of [Redacted]. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision based thereon.

In her protest letter, the taxpayer claims she is not responsible. She contends that she is not the owner of the business and only did some minor bookkeeping for the business. At the informal conference she expanded on these points. She stated that her son, [Redacted] was the owner of the business. During the time periods in question, she worked in [Redacted] and the business was located in [Redacted]. The manager of the business would fax her necessary

information to allow her to fill out the sales and withholding tax returns and then she would file them.

The taxpayer had check signing authority for the business. She also had a stamp containing [Redacted]'s name, and she would use that on occasion when she paid bills on behalf of the LLC. She made decisions for the business and decided which bills should be paid.

Additionally, when the compliance officer contacted the LLC in regard to its tax liability, she was referred to the taxpayer. The taxpayer then negotiated with the compliance officer to work out a payment arrangement for the LLC.

With respect to sales tax, Idaho Code § 63-3627 provides that, among other things, every person with the duty to account for or pay over taxes of a limited liability company is personally responsible for the payment of the taxes, penalty, and interest of the limited liability company should the taxes not be paid by the limited liability company. The statute provides:

(a) Every person with the duty to account for and pay over any tax which is imposed upon or required to be collected by any taxpayer under this chapter on behalf of such taxpayer as an officer, member or employee of such taxpayer, shall be personally liable for payment of such tax, plus penalties and interest, if he fails to carry out his duty.

(b) Any such individual required to collect, truthfully account for, and pay over any tax imposed by this chapter who wilfully fails to collect such tax, or truthfully account for and pay over such tax, or wilfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 63-3046(b), Idaho Code, for any offense to which this subsection (b) is applicable.

Here, the limited liability company did not pay over various sales taxes. With respect to the withholding tax, Idaho Code § 63-3078 imposes a similar obligation on responsible parties.

It provides:

Any person required to collect, truthfully account for and pay over any tax imposed by this title who wilfully fails to collect such tax, or truthfully account for and pay over such tax, or wilfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for or paid over. No penalty shall be imposed under this or other Idaho Code sections for any offense to which this section is applicable except and to the extent that such would be imposed when this section is interpreted in a manner similar to the interpretation given to section 6672(a) of the internal revenue code.

Both statutes are similar to the responsible party statute in the Internal Revenue Code, and in fact, § 63-3078 provides that it should be interpreted in a manner similar to the interpretation given to the related Internal Revenue Code section. The language of § 63-3627 is substantially similar to that of § 63-3078, and though not specifically provided for in the statute, it should be interpreted in a similar manner. Thus, analysis of the federal statute by the federal courts is relevant to the determination of whether the taxpayer is a responsible party for the payment of the taxes owed by the LLC.

To be held responsible for the unpaid taxes on an entity such as an LLC, the individual must have significant authority in general management and fiscal decision making. *Bradshaw v. United States*, 83 F.3d 1175 (10th Cir. 1995). Indicia of responsibility within the meaning of the statute which imposes penalty on a responsible person who willfully fails to pay federal withholding taxes include holding of corporate office, control over financial affairs, authority to disburse corporate funds, stock ownership, and ability to hire and fire employees. *Id.*

The term “responsible person” is broad and may include many individuals connected with a corporation, and more than one individual may be the responsible person for an employer. *The Purdy Co. of Illinois v. United States*, 814 F.2d 1183, 1188 (7th Cir.1987); *Commonwealth*

Nat. Bank of Dallas v. United States, 665 F.2d 743, 757 (5th Cir.1982). Several factors may indicate that a party is a responsible person. The key element, however, is whether that person has the statutorily imposed duty to make the tax payments. This duty is considered in light of the person's authority over an enterprise's finances or general decision making. *Ruth v. United States*, 823 F.2d 1091, 1094 (7th Cir.1987); *Godfrey*, 748 F.2d at 1575. This authority is generally found in high corporate officials charged with general control over corporate business affairs who participate in decisions concerning payment of creditors and disbursement of funds. *Monday v. United States*, 421 F.2d 1210 (7th Cir. 1970), *cert. denied*, 400 U.S. 821, 91 S.Ct. 38, 27 L.Ed.2d 48 (1970). However, a party cannot be presumed to be a responsible person merely from titular authority. Most corporate officers probably do have the authority to make disbursements, particularly in a closely held corporation. The focus must instead be on substance rather than form. *Godfrey*, 748 F.2d at 1576. The substance of the circumstances must be such that the officer exercises and uses his authority over financial affairs or general management or is under a duty to do so before that officer can be deemed to be a responsible person. See *Pototzky v. United States*, 8 Cl.Ct. 308 (1985) (citing *Godfrey v. United States*, 748 F.2d 1568 (Fed.Cir.1984).

In *First American Bank and Trust Company v. United States*, 1979 WL 1292 (W.D. Okla. 1979), the IRS assessed First American Bank and Trust as a responsible party for the unpaid taxes owed by Taylor Furniture Company (Taylor). The Bank had made an operating loan to Taylor and took a security interest in all of Taylor's personal property. Bill Taylor, the principal of Taylor, became incapacitated and unable to manage the business. Jim Hendricks, an employee of the Bank, began exercising approval authority over the Taylor checking account for the purpose of preserving the company's assets. Hendricks, acting on behalf of the Bank,

exercised significant authority over the checking account and made preferences between various creditors on deciding who should be paid. Based on these facts, the District Court upheld the IRS assessment.

Here, the only evidence available to the Commission indicates that the taxpayer had authority to act on behalf of the LLC. She admitted she prepared the sales and withholding tax returns. She had check signing authority and exercised her decision making authority to determine which creditors would be paid. In addition, she negotiated with the Compliance staff about the payment of the LLC's taxes. It does not appear that she was ever formally given the authority to act on behalf of the LLC, but she was indirectly given this authority by her son, who was the principal of the LLC. He asked her to prepare returns, gave her check signing authority, and allowed her to exercise discretion with respect to making payments. The Notices of Deficiency are presumed to be correct, and the burden is on the taxpayer to prove she is not responsible for the taxes claimed due. *Riverside Development Company v. Vandenberg*, 137 Idaho 382, 48 P.3d 1271 (2002). Here she has not met her burden.

After the Notices of Deficiency were issued, the Commission collected some of the amount due from a party who is also liable on the debt. The taxpayer will be given credit for these payments.

For these reasons, the Notices of Deficiency will be affirmed.

WHEREFORE, the Notices of Deficiency Determination dated September 2, 2006, are hereby APPROVED, AFFIRMED, AND MADE FINAL .

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest for the periods January 2006 through June 2006 for sales and withholding taxes:

	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
Sales Tax				
3/06	\$ 753.31	\$ 383.36	\$ 6.60	\$1,143.27
4/06	1,736.20	434.05	93.02	2,263.27
5/06	1,886.00	471.46	92.06	2,449.52
6/06	1,636.00	408.97	71.80	2,116.77
Withholding Tax				
3/06		\$ 954.51		954.51
6/06		654.94		<u>654.94</u>
			TOTAL DUE	<u>\$9,582.28</u>

Interest is calculated through March 31, 2007.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2007.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____, 2007, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.
